
1992 Wis Eth Bd 32
EMPLOYMENT CONFLICTING WITH OFFICIAL DUTIES; DUAL
EMPLOYMENT; DISQUALIFICATION; OFFICERS, DIRECTORS, AND
MEMBERS OF ORGANIZATIONS

A state public official should not accept a paid position as a member of a private company's advisory board unless:

- a. the official's appointing authority has determined the private pursuit will not conflict with his or her official duties or reflect adversely upon the official's agency and
- b. the official can demonstrate that the position is offered primarily for reasons independent of holding a state public office.

If the official accepts the private position, the official should not:

- a. use the state's time or resources while engaging in company-related activities;
- b. use his or her official position to benefit the company;
- c. participate in an official decision that will affect the company in a way significantly different from the way the decision affects other companies; or
- d. use confidential information the official acquires from his or her state job to help the company.

OEB 92-32 (November 25, 1992)

Facts

[1] This opinion is based upon these understandings:

- a. You are a state public official.
- b. Your duties involve review, analysis, and approval of financial proposals from public and private companies.
- c. You have been asked to serve as a member of the advisory board of a private corporation for which you will receive reimbursement of expenses and compensation of less than \$1,000 per year.
- d. You believe that the position is being offered to you because of your personal expertise and contacts and not because of your position as a state public official.

Question

[2] The Ethics Board understands your question to be:

What restrictions, if any, does the Ethics Code impose on a state public official's serving on the business advisory board of a private corporation?

Discussion

[3] Duty of Undivided Loyalty

In general, a public official who is a full-time state employee may pursue private employment opportunities as long as the official's agency has determined, in the first instance, that such employment does not conflict with the official's state duties.¹ A public officer owes an undivided duty of loyalty to the public whom he or she serves and should avoid placing himself or herself in a position in which a conflict of interest might arise.² An official should not pursue a private interest if the agency determines that: (1) it will materially affect the performance of the official's state duties or (2) it will adversely affect the image or effectiveness of the agency by giving rise to the appearance or reality of impropriety. As a general matter, occasional and infrequent conflicts may be dealt with by abstaining from participation. Continuing and frequent conflicts might best be dealt with by divesting the private interest. If an agency determines that you may accept the position that is being offered to you, then several provisions of the Ethics Code are pertinent to guiding your actions.

[4] Use of Public Office

Section 19.45(2), *Wisconsin Statutes*, provides, in general, that no state public official may use his or her office or position to obtain financial gain or anything of substantial value.³ This means that you may not use the state's time or resources in the pursuit of a private opportunity. The prohibition also includes using the status or prestige of office to obtain private gain.⁴ Thus, you should not accept a paid position unless you can clearly demonstrate that it is being offered to you for reasons unrelated to your holding your public position.⁵ You have indicated that you believe that the position was offered because of your personal expertise and contacts, not

¹ See, e.g., 10 Op. Eth. Bd. 19 (1988).

² 8 Op. Eth. Bd. 33 (1985); 63A Am. Jur. 2d, Public Officials and Employees §§321, 322.

³ Section 19.45(2), *Wisconsin Statutes*, provides:

19.45 Standards of conduct; state public officials.

(2) No state public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This subsection does not prohibit a state public official from using the title or prestige of his or her office to obtain contributions permitted and reported as required by ch. 11.

⁴ See, e.g., 7 Op. Eth. Bd. 19 (1983).

⁵ 1992 Wis Eth Bd 18.

because you hold a particular state public office. If this is so, then you may accept the position notwithstanding that you may have acquired your expertise and connections through state employment.

[5] Conflicting Interests

Section 19.45(2), together with §19.46(1), *Wisconsin Statutes*, may also be pertinent in guiding your official actions as they may affect the corporation on whose advisory board you have been asked to serve.⁶ As a general matter, you should refrain from taking any official action with respect to matters that may have a substantial financial impact on the organization on whose advisory board you serve. You should not participate in official decisions or discussions involving a possible financial relationship with the company, or with a competitor of the company, by your state agency. Nor should you participate in general policy formulation that affects the company or its competitors unless: (1) the policy affects a whole class of similarly situated companies; (2) the company represents only a small part of that class; (3) the policy's affect on the company is neither significantly greater or less than its affect on other members of the class.⁷

[6] Confidential Information

Another provision of the Ethics Code that may also be pertinent is §19.45 (4), *Wisconsin Statutes*. That section provides:

No state public official may intentionally use or disclose information gained in the course of or by reason of his or her official position or activities in any way that could result in the receipt of anything of value for . . . any person if the information has not been communicated to the public or is not public information.

[7] Thus, for example, you should not rely on confidential information acquired from your public position to assist the company in seeking a financial relationship with your agency or in competing with other companies.

Advice

[8] The Ethics Board advises

⁶ Section 19.46(1), *Wisconsin Statutes*, provides:

19.46 Conflict of Interest Prohibited; Exception. (1) Except in accordance with the board's advice under sub. (2) and except as otherwise provided in sub. (3), no state public official may:

(a) Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.

(b) Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

⁷ See, e.g., 11 Op. Eth. Bd. 9 (1989).

1. You not to accept a paid position as a member of a private company's advisory board unless:
 - a. your appointing authority has determined the private pursuit will not conflict with your official duties or reflect adversely upon your state agency; and
 - b. you can demonstrate that the position is offered primarily for reasons independent of your holding a state public office.
2. If you accept the private position, you should not:
 - a. use the state's time or resources while engaging in company-related activities;
 - b. use your official position to benefit the company;
 - c. participate in an official decision that will affect the company in a way significantly different from the way the decision affects other companies; or
 - d. use confidential information you acquire from your state job to help the company.